

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 05-0199**  
**Underground storage Tank Fees**  
**For the Tax Period 1991-1996**

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**ISSUE**

**1. Underground Storage Tank Fee- Imposition**

**Authority:** IC 6-8.1-5-1 (b), IC 13-7-20-32, IC 13-7-20-41, IC 13-12-12-4, IC 6- 8.1-1-1, IC 13-23-12-1, IC 13-11-2-150 & 151, IC 13-11-2-151(a) 1, IC 13-11-2-150.

The taxpayer protests the department's imposition of underground storage tank fees.

**STATEMENT OF FACTS**

The taxpayer is a corporation that operates a convenience grocery store with underground storage tanks. The taxpayer leased the real estate and operated the convenience grocery store in question from April 1, 1985 until May 1, 1996. On that date, the taxpayer purchased the real estate. After a review of the of fees paid on the taxpayer's underground storage tanks, the Indiana Department of Revenue (DOR) assessed additional underground storage tank fees for the tax period 1991-1996, interest and penalty. The taxpayer protested the imposition of the fees, interest and penalty. A hearing was held and this Letter of Findings results.

**1. Underground Storage Tank Fee-Imposition**

**DISCUSSION**

During the tax period 1991-1996, IC 13-7-20-32 and IC 13-7-20-41 imposed underground storage tank fees on the owner of underground storage tanks. Although the Indiana Department of Environmental Management (IDEM) administers the state regulation of underground storage tanks, these statutes mandate that the DOR collect and deposit the underground storage tank fees. IC 6-8.1-1-1 defines "listed tax" to include "any other tax or fee that the department is required to collect or administer." Since the DOR pursuant to statute must collect the underground storage tank fees, these fees constitute listed taxes. All of the laws and regulations concerning the DOR's collection of listed taxes apply to the DOR's collection of the underground storage tank fees. All tax assessments are presumed to be accurate. The taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b).

The taxpayer argued that it did not owe the unpaid storage tank fees because it was not the owner of the property with the underground storage tanks until May 1, 1996. In support of this contention the taxpayer submitted a copy of the sales agreement. This agreement specifically addressed the issue of payment of taxes, stating in relevant part as follows:

3. Taxes: Said real estate is sold and shall be conveyed to the Buyer free and clear of all liens and encumbrances, except a pro-rated portion of the 1996 taxes, due and payable in 1997, to be pro-rated as of the date of closing, which, together with all taxes and assessments made subsequent to the date hereof, the Buyer assumes and agrees to pay.

The liability under protest in this issue concerns the underground storage tank fees that were not paid prior to the transfer of ownership of the real estate and underground storage tanks to the taxpayer. However, during that period, the taxpayer leased the real estate from the person from whom he purchased the real estate. Under the terms of the lease agreement, the previous owner retained responsibility for the underground storage tanks and the payment of all taxes related to the real estate.

The fee is assessed based on IC 13-23-12-1 and is required of “the owner of an underground storage tank.” IC 13-11-2-150 & 151 provide definitions for “Owner” and “Owner or Operator” respectively. The taxpayer, as the renter of the property, operated the station on a day to day basis. IC 13-11-2-151(a) 1 defines “Owner or operator” as “a person who owns or operates the facility.” IC 13-11-2-150 has no provision to identify the “Owner” of a fuel storage tank as one involved in the operation of the facility.

IDEM records indicate that the previous owner sometimes paid the underground storage tank fees due during the tax period. These payments demonstrate that he was responsible for the payment of these fees and that he realized they were due. The IDEM records substantiate the taxpayer’s contention that he has paid all underground storage tank fees due after he became the owner of the underground storage tanks.

### **Finding**

The taxpayer’s protest is sustained.